

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK JONES,

Plaintiff,

v.

CASE NO. 10-CV-11604

HON. GEORGE CARAM STEEH

THOMAS PARLING,
LINDA BUCKHOLZ, and
JASON THOMAS,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION (#54) AND DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT (#41)

Plaintiff Mark Jones, a prisoner currently in the custody of the Michigan Department of Corrections, alleges that defendants violated his constitutional rights by fabricating misconduct reports and security classification documents in order to increase plaintiff's custody level. Plaintiff claims these actions were taken in retaliation for plaintiff's attempt to seek a pardon or commutation of sentence from the Michigan Parole Board. After the June 14, 2010 order of this court, only this retaliation-based § 1983 claim against the three individual defendants remains. On September 20, 2010, defendants filed a motion for summary judgment, arguing: (1) plaintiff failed to exhaust his administrative remedies prior to filing his claim; (2) defendants are protected by qualified immunity; and (3) the court should decline to exercise supplemental jurisdiction over plaintiff's state law claims. Plaintiff filed a response to defendants' motion on October 20, 2010 arguing he exhausted his administrative remedies. On November 2,

2010, the court ordered defendants to file a supplemental brief regarding the issue of exhaustion and to include the Grievance Inquiry Screen displaying all Step III Grievance Appeals filed by plaintiff and all Grievances pursued by plaintiff through Step III of the MDOC Grievance Process. Defendants failed to file a supplemental brief. On November 29, 2010, plaintiff filed a motion for summary judgment. On January 14, 2011, Magistrate Judge Morgan issued a report and recommendation that the court deny defendants' motion for summary judgment and deny plaintiff's motion for summary judgment. On February 7, 2011, the court adopted the report and recommendation, denying the parties' motions for summary judgment.

On February 3, 2011, defendants filed another motion for summary judgment. The February 3, 2011 motion is identical to the first, but contains additional exhaustion documentation. On August 12, 2011, Magistrate Judge Whalen issued a report and recommendation that the court deny defendants' second motion for summary judgment. The report and recommendation states defendants' motion for summary judgment should be denied because: (1) defendants failed to obtain leave of court to file their second motion for summary judgment; (2) the arguments raised were ruled upon in the court's February 7, 2011 order and are thus barred under the doctrine of law of the case; (3) defendants waived these arguments by not filing objections to Magistrate Judge Morgan's report and recommendation; and (4) the documentation shows plaintiff satisfies the exhaustion requirement. Defendants have not filed objections to the report and recommendation, and the deadline for doing so has passed. The court has reviewed the report and recommendation, and in the absence of timely objection,

The court hereby ACCEPTS and ADOPTS Magistrate Judge Whalen's August

12, 2011 report and recommendation and DENIES defendants' second motion for summary judgment.

SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: September 8, 2011

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on September 8, 2011, by electronic and/or ordinary mail and also to Mark Jones #22308 at SHAR Macomb, 6902 Chicago Road, Warren, MI 48092.

S/Marcia Beauchemin
Case Manager/Deputy Clerk